



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
CIVIL RIGHTS

RETURN RECEIPT REQUESTED

Mr. Russell J. Harding, Director
Michigan Department of Environmental Quality
P.O. Box 30473-7973
Lansing, Michigan 48909-7973
(Certified Mail # 7001 2510 0003 3058 1181)

Ms. Deborah Ann Romak
(b) (6) Privacy
Romulus, Michigan 48174
(Certified Mail # 7001 2510 0003 3058 1174)

Re: EPA File No. 17R-99-R5 (EDS, Inc. Title VI Complaint)

Dear Director Harding and Ms. Romak:

On December 11, 2001, the EPA Office of Civil Rights (OCR) accepted for investigation an administrative complaint filed on June 22, 1999, by Ms. Deborah Ann Romak pursuant to Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.* and EPA's implementing regulations, 40 C.F.R. Part 7. The complaint alleged discrimination by the Michigan Department of Environmental Quality (MDEQ), with regard to its approval of a permit to drill disposal wells for a hazardous waste facility in Romulus, Michigan.

This letter and the accompanying Investigative Report constitute OCR's findings under Title VI and 40 C.F.R. Part 7, and OCR's dismissal of this Title VI complaint. The findings and their legal and factual bases are detailed in the Investigative Report, which is enclosed and is incorporated in this letter by reference.

Legal Background for Complaint. Title VI prohibits discrimination on the basis of race, color, or national origin under programs or activities of recipients of federal financial assistance. The regulations implementing Title VI for recipients of EPA financial assistance are codified at 40 C.F.R. Part 7. They prohibit intentional discrimination, as well as unjustified discriminatory effects that occur in the administration of an EPA recipient's programs or activities. Facially neutral policies or practices that result in discriminatory effects violate EPA's Title VI regulations, unless the recipient can provide justification and there are no less discriminatory alternatives.

MDEQ receives financial assistance from EPA and is therefore subject to the requirements of Title VI and EPA's implementing regulations.

The Title VI Complaint. Ms. Romak is a member of the City Council of Romulus, Michigan, which has an African-American population of approximately thirty percent. The complaint concerned MDEQ's review and ultimate approval of two permits to drill for the proposed facility, based on applications submitted by Environmental Disposal Systems, Inc. (EDS) pursuant to MCL §§ 324.62501 et seq. It alleged discrimination in the public participation process on two grounds: (1) that MDEQ did not provide a public hearing before permitting a prior EDS facility in Romulus; and (2) that Romulus was not made a party to a settlement agreement between MDEQ and EDS. It further alleged that citizens of Romulus were "disproportionately exposed to pollution and other environmental dangers." EPA construed this as claiming discriminatory effects from facility operation, either alone or in combination with existing impacts on Romulus.

The Title VI Investigation. EPA reviewed the allegation and MDEQ's position statement. EPA also reviewed the permitting records for the permits to drill, for construction of the hazardous waste management facility associated with the wells (under MCL §§ 324.11101 et seq.), and for Underground Injection Control (UIC, issued by EPA Region 5), as well as applicable legal authorities and other relevant information. In addition, EPA conducted demographic analysis and air dispersion modeling to determine the potential for disparate impacts.

Finding. For the public participation allegations, EPA rejects the first claim as untimely because MDEQ had permitted the prior EDS facility at issue in 1991. Title VI complaints must generally be filed within 180 days of the alleged discriminatory act. EPA dismisses the second claim because the allegedly discriminatory act was not an act of MDEQ. Rather, the Ingham County Circuit Court approved the settlement at issue as an appropriate resolution of litigation, after considering arguments by the City of Romulus (an intervening party in the litigation).

EPA also dismisses the discriminatory impact allegations. EPA determined that several of the potential facility impacts identified in the permitting records were not adverse for purposes of Title VI, either considered alone or as potential contributors to existing impacts in the vicinity:

Seismic activity. Potential seismic impacts included an increased risk of earthquakes resulting from operation of the facility, and the likely magnitude and effects of such earthquakes. Based on the federal and state permitting analyses, there is no meaningful possibility of seismic activity as a result of operations at the EDS facility.

Facility noise. Permitting information indicated that noise from facility operation would be contained in the treatment building, with no reasonable potential for off-site impacts approaching ambient noise levels around the facility.

Water quality (groundwater impacts). Injected waste is not a potential water quality impact in itself, as it will be contained in an injection zone with no exposure pathways.

However, unplanned water quality impacts could occur in case of well failure or upward migration of waste. The federal and state permits include design and operating requirements that ensure a very small likelihood of upward migration or well failure, minimize any water quality impacts resulting from well failure, and ensure that any impacts that do occur will be addressed before they could reasonably be expected to affect residents around the facility.

EPA determined that other potential facility impacts would not have a disparate impact on African-American residents for purposes of Title VI. Because these impacts would not be disparate, they could not contribute to any potential existing disparity in the distribution of environmental impacts in the area, and so it was not necessary to investigate pre-existing impacts for their potential contribution to cumulative adverse disparate impacts. These potential impacts include:

Air quality. The EDS facility is allowed to emit particulate matter and volatile organic compounds (VOCs) under a minor source permit issued by MDEQ. The expected distribution of any off-site impacts from these permitted emissions did not indicate any reasonable possibility of disparate impacts.

For other potential air impacts from the facility (emissions resulting from spills or leaks, fugitive dust emissions, and odors), information about the likely extent and location of such impacts, together with demographic information, showed no reasonable possibility of disparate impacts.

Truck noise. Noise may be associated with diesel truck traffic to and from the facility. The facility permit limits trucks to a mandatory route. Analysis of the demographics along this route showed no reasonable possibility of disparate impacts from noise.

Soil quality. Impacts on surface soils could result from spills or leaks. Soil impacts from any accidental release at the facility would be contained on-site. There is no reasonable possibility of disparate impacts from releases caused by an accident during transportation.

Water quality (surface water impacts). The only potentially affected surface water is a county drain with intermittent flow, which may receive discharges of uncontaminated stormwater from the EDS facility. Even assuming off-site impacts from contamination of this waterbody, there is no reasonable possibility of disparity in such impacts.

Water quality (truck accident). There is a potential for impacts to groundwater resulting from a spill while waste is being transported to the facility, if the spilled liquid is absorbed through the soil into groundwater. Measures are in place to quickly address any spill during transport, and contact with any waste waters or contaminated water would be prevented until cleanup was completed. In any case, there is no reasonable possibility that any such impacts would be disparate.

Conclusion. Based on its review of the materials submitted and information gathered during its investigation, and on controlling legal authority, EPA has not found a violation of Title VI or EPA's implementing regulations. Accordingly, EPA is rejecting one allegation and dismissing two allegations as of the date of this letter.


Although EPA has found no violation of Title VI on the facts of this case, MDEQ's reliance on EPA Region 5's environmental justice screening analysis, conducted during the Region's UIC permitting decision, raises concern about the adequacy of MDEQ's approach to assure its future compliance with Title VI. EPA Region 5's guidelines for identifying potential environmental justice issues do not, and are clearly not intended to, evaluate or assure MDEQ compliance with Title VI. EPA advises MDEQ to independently evaluate its compliance with Title VI through reviews designed for that purpose. EPA also strongly urges MDEQ to complete the process of developing its policy for Title VI compliance, which was apparently under way as of February 2000. The June 27, 2000 "Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs" (65 Fed. Reg. 39650) discusses various approaches and activities that may prove useful in this process.

Title VI provides all persons the right to file complaints against recipients of federal financial assistance. No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against any individual or group because of action taken or participation in any action to secure rights protected under Title VI. *See* 40 C.F.R. § 7.100.

Upon request, under the Freedom of Information Act (5 U.S.C. § 552), EPA may be required to release this document, the Investigative Report, and related correspondence, documents, and records. In the event of such a request, EPA will seek to protect, to the extent provided by law, any personal information which, if released, could constitute an unwarranted invasion of the privacy of any individual.

If you have any questions, please feel free to contact Alan Walts of EPA's Title VI Task Force at (312) 353-8894.

Sincerely,



Karen D. Higginbotham
Acting Director

Enclosure

cc: Steve Pressman, Acting Associate General Counsel
Office of General Counsel (MC 2399A)

Phyllis P. Harris, Principal Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance (MC 2201A)

Barry Hill, Director
Office of Environmental Justice (MC 2201A)

Thomas V. Skinner, Regional Administrator
EPA Region 5 (R-19J)

Gail Ginsberg, Chair
Title VI Task Force (MC 2201A)